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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/024,925	12/19/2001	Shane A. Straw SR.	955-3085-U	5640
7590	11/24/2003			EXAMINER
ROBERT H. EARP,111 MCDONALD, HOPKINS, BURKE & HABER CO, L.P.A. 2100 BANK ONE CENTER 600 SUPERIOR AVENUE, E. CLEVELAND, OH 44114-2653			WATSON, ROBERT C	
			ART UNIT	PAPER NUMBER
			3723	
			DATE MAILED: 11/24/2003	

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/024,925	STRAW ET AL.
	Examiner Robert C. Watson	Art Unit 3723

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 07 November 2003.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-17 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-5,8-11 and 14-17 is/are rejected.
- 7) Claim(s) 6-7 and 12-13 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All
 - b) Some *
 - c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.
- 13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
 - a) The translation of the foreign language provisional application has been received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____. | 6) <input type="checkbox"/> Other: _____. |

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5, 8-11, and 14-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hying et al in view of Zimmer.

Hying et al shows a screw jack having relatively slideable jack tubes. Hying et al at Figure 3 shows a nut 7 captured in a nut retainer seated within an upper end of a lower jack tube. The nut retainer is integral with the upper end of the jack.

Zimmer teaches the use of a nut retainer 46 separate from the end of a tube 20. The nut retainer permits insertion of the nut by means of a lateral slot. The nut retainer is nestingly received in the end of the tube.

To employ a nut retainer nestingly received in the upper end of the Hying et al lower jack tube whereby the nut can be inserted in a lateral slot of the nut retainer would have been obvious for one skilled in the art at the time the invention was made in view of the disclosure of Zimmer. One of ordinary skill in the art would have been motivated to do this in order to provide a cheaper and easier means for capturing the Hying et al nut in the upper end of the lower jack tube.

Claims 6-7 and 12-13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Art Unit: 3723

Applicants' remarks have been given careful consideration. In particular applicants have taken the position that element 20 of Zimmer is not a "tube". Since elongate member 20 of Zimmer is hollow with an opening at each end it is proper to call member 20 a "tube" and nut retainer 46 is most certainly seated or nestingly received within this tube. Applicants also argue that the Zimmer reference is "non-analogous subject matter". Applicants' position in this regard is believed to be in error. Zimmer deals with the problem of retaining a nut in a tube as does the primary reference, Hying et al. Applicant further argues that if the Zimmer nut retainer were used in lieu of the Hying et al nut retainer that the strength of the jack of Hying et al would somehow be diminished. This statement is found to be disparaging of the level of skill of one having ordinary skill in the art. Most certainly, one skilled in the art would select a suitable construction, material, and thickness for the nut retained so as not to fail when in use. Applicant's argument impermissibly ignores the level of skill of one having ordinary skill in the art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert C. Watson whose telephone number is 703 308-1747. The examiner can normally be reached on Mon. - Thurs. , 5:30am - 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph J. Hail III can be reached on 703 308-2687. The fax phone number for the organization where this application or proceeding is assigned is 703 305-3579.

Art Unit: 3723

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308-1148.

rcw



ROBERT C. WATSON
PRIMARY EXAMINER